

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
TUESDAY, APRIL 25, 2023**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Tuesday, April 25, 2023**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Monday, April 24, 2023**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE TRISHA J. HIRASHIMA** and if oral argument is requested, it will be heard in **Department 31**, located at 10820 Justice Center Drive, Roseville, California.

<p>PLEASE NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Local Rule 10.24.) More information is available at the court's website: www.placer.courts.ca.gov.</p>

1. M-CV-0083373 ESA Management, LLC v. Puentes, Carol

Defendant is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Demurrer to Complaint

A party may demur where the pleading does not state facts sufficient to constitute a cause of action or when the complaint is uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. (*Bader v. Anderson* (6th Dist. 2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed true no matter how improbable they may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (2d Dist. 1981) 123 Cal.App.3d 593, 604.) However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

Here, defendant contends the complaint fails to state a cause of action due to defective notice and cites authority relating to expiration of a lease and violation of one or more covenants pursuant to Code of Civil Procedure section 1161(1) and 1161(3). Defendant also contends entitlement to a second 3-day notice. However, this unlawful detainer

matter alleges termination of a lease for failure to pay rent pursuant to Code of Civil Procedure section 1161(2). The 3-day notice to cure or quit attached as Exhibit 2 to the complaint clearly allows for the opportunity to cure and otherwise meets the statutory requirements. As the allegations are for failure to pay rent, there is no requirement of a second three-day notice. (See Civ. Code, § 1946.2, subd. (c) [requiring a three-day notice to cure and, if not cured, a three-day notice to quit for unlawful detainer matters pursuant to Code of Civil Procedure section 1161(3) only].) The demurrer is overruled on this basis.

Defendant further contends the complaint is uncertain as it is based on “multiple notices.” However, a demurrer is an objection to the legal sufficiency of the complaint on its face. The only notice provided with the complaint is Exhibit 2, and as described above, it meets the statutory requirements. Any additional notices are outside of the face of the complaint and an inappropriate basis for demurrer. The demurrer is overruled on this basis as well.

The complaint adequately pleads a cause of action for unlawful detainer. The demurrer is overruled. Defendant shall file and serve an answer by May 2, 2023.

2. S-CV-0026853 In re the petition of 4215 Mesa Ct., Rocklin

Moving party is advised the notice of motion must include complete language of the court’s tentative ruling procedures. (Local Rule 20.2.3(c).)

The notice of motion included an incorrect address for the court. The parties are advised if oral argument is requested, it will be heard in Department 31, which is located at **10820** Justice Center Drive, Roseville, CA 95678.

Claim for Surplus Funds

Claimant Karen Morgan petitions the court to release to her surplus funds following a trustee sale of real property pursuant to Civil Code section 2924k(a)(4) as she is “trustor or the trustor’s successor in interest.” Claimant refers to herself as executor for Michael Cobb. However, it does not appear from the court’s own records that claimant has been appointed personal representative of the estate of Michael Cobb as the court was unable to locate any probate case for the decedent. Claimant may be eligible to proceed by a small estate affidavit per Probate Code section 13100 et seq. The court further observes the instant claim was not supported by notice to the Franchise Tax Board, which previously filed a claim against the deposited funds. The claim is denied without prejudice.

3. S-CV-0040437 Deuschel, Laurie A v. Clear Point Fin. Group Inc.

Plaintiff is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Plaintiff's Motion to Set Aside Dismissal

Plaintiff Laurie Deuschel moves the court to set aside dismissal entered February 14, 2023 as to defendant Clear Point Financial Group, Inc. The court may "upon any terms as may be just" set aside dismissal due to the moving party's "mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) A motion to set aside dismissal must be made "within a reasonable time, in no case exceeding six months" from the entry of default. (*Ibid.*) Here, plaintiff's request is based on various obstacles that have impeded her ability to litigate this case, including medical issues, caring for her elderly mother, and having limited access to the Internet and a law library. Further, plaintiff's request is timely, as it was brought approximately four weeks after the court's order granting defendant Clear Point's motion for terminating sanctions and dismissal of the action against this defendant.

It is important for the court to review the procedural history of this case that led to the dismissal. On June 2, 2021, the court granted defendant's unopposed motion to compel discovery responses and ordered plaintiff to provide responses to form interrogatories, special interrogatories, and requests for production. The notice of entry of order was served on plaintiff June 4, 2021. Plaintiff had not responded in any way to the initial discovery requests or to the court's order compelling responses, and defendant was unable to prepare for trial. Defendant filed its motion for terminating sanctions on January 12, 2023, which plaintiff did not oppose. These motions and orders were served on plaintiff by mail. (Decl. Karen Pine, Exhs. 1–3, 5.) Defense counsel had reached out to plaintiff by phone and email as well. (Decl. Karen Pine, ¶ 7, Exh. 4.) On February 14, 2023, the court found plaintiff misused the discovery process and that terminating sanctions were warranted as it appeared to the court no less drastic sanction would compel plaintiff's compliance with her discovery obligations. The unopposed motion was granted, and the case was dismissed as against defendant Clear Point. While the court is sympathetic to any litigants' health concerns and obstacles like navigating the limited hours of local libraries, such obstacles do not justify the passage of approximately eighteen months without progress on plaintiff's discovery obligations. It would not be just to grant relief given the procedural history of this case.

For the above reasons, the court declines to exercise its discretion and the motion is denied.

4. S-CV-0040629 Scheiber Ranch Properties LP v. City of Lincoln

Hearing After Return on Remittitur

The appearances of the parties are required for the hearing after return on remittitur. The court notes there is no proposed judgment or proposed peremptory writ lodged by the respondent/real party. The court requests the parties lodge these proposals with the court forthwith.

5. S-CV-0042701 Simpson, Kelley S v. Van Doren, Holly Martin

Petition for Approval of Minor's Compromise for Zoe Sittenaurer

The petition is granted as prayed. After careful consideration of the petition and supplemental declaration, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

Petition for Approval of Minor's Compromise for Brigitta Sittenaurer

The petition is granted as prayed. After careful consideration of the petition and supplemental declaration, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

6. S-CV-0045883 Wu, Cuiying v. TAYU Investment

Motion to Vacate Judgment

Defendant requests the court vacate default judgment entered February 10, 2023 pursuant to its inherent authority "[t]o amend and control its process and orders so as to make them conform to law and justice." (Code Civ. Proc., § 128, subd. (a)(8).) Defendant contends the court improperly awarded plaintiff money damages as the complaint and first amended complaint failed to demand any amount of damages, plaintiff failed to serve any statement of damages, and the requests for entry of default and proposed judgment were blank as to damages.

The amount of damages awarded in default judgment cannot exceed what was demanded in the operative complaint. (Code Civ. Proc., § 580, subd. (a).) A statement of damages is required in a personal injury or wrongful death action or where punitive damages are sought. (Code Civ. Proc., §§ 425.11, 425.115.) Here, a review of the court file reveals the operative complaint (as well as the initial complaint) requested compensatory damages in excess of \$25,000, along with penalties and attorneys' fees. As the court awarded \$25,000 in damages, the damages award is consistent with the demand in the operative

complaint. Further, plaintiff was not required to serve any statement of damages because this is not a personal injury or wrongful death action nor were punitive damages sought. While certain documents served on defendant do not reflect the amount of damages sought, defendant was on notice from receipt of the initial complaint plaintiff sought damages in excess of \$25,000 and penalties. Furthermore, the default-prove up package included the following request:

1. Unpaid Wages:	\$7,857.85
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Memorandum Of Points And Authorities In Support Of Application For Default Judgment

2. Meal and Rest Break Penalties:	\$17,585.00
3. Waiting Time Penalties:	\$4,968.75
4. Failure to Provide Accurate Earnings Statements:	\$4,000.00
5. Costs	\$2,051.41
6. Reasonable Anticipated Attorneys' Fees:	<u>\$6,300.00</u>
TOTAL:	<u>\$42,763.01</u>

Pursuant to the proof of service filed January 4, 2023, it appears the default prove-up package was served on defendant by mail and electronically on January 4, 2023.

Defendant presents other arguments regarding the truthfulness of the facts as alleged in the complaint. However, a default judgment is a judgment on the merits in plaintiff's favor and is res judicata as to all issues pleaded in the complaint. (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 871.) By defaulting, a defendant admits the truthfulness of all material allegations of the complaint. (*Robinson v. Early* (1967) 248 Cal.App.2d 19, 25.) Here, defendant was served with the operative complaint December 2, 2021, elected not to file any responsive pleading, and the court entered default on March 1, 2022. Defendant waived the right to contest the truthfulness of the allegations in the complaint and possible defenses it may have had.

For the foregoing reasons, the motion to vacate the judgment is denied.

Within the same motion, defendant moves to tax several categories of costs. However, a motion to tax costs must be filed within 15 days after service of the costs memorandum. (Cal. Rules of Court, rule 3.1700, subd. (b)(1).) Accordingly, defendant's motion to tax costs is denied as untimely. The court notes defendant moves to tax line #16, other costs of \$381.00. The court previously declined to award that line item. (Judgment filed February 10, 2023, ¶¶ 6.a(4), 7.)

7. S-CV-0046221 Roman, Paul v. Joaquin, Thomas

The motion for summary judgment is dropped from calendar as no moving papers were filed with the court.

8. S-CV-0049263 Sanguinetti, Joden v. General Motors LLC

Defendant is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Demurrer to First Amended Complaint

The notice of motion included an incorrect address for the court. The parties are advised if oral argument is requested, it will be heard in Department 31, which is located at **10820** Justice Center Drive, Roseville, CA 95678.

Defendant demurs to the fifth cause of action for fraudulent inducement-concealment in the first amended complaint ("FAC"). A party may demur where the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10, subd. (e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. (*Bader v. Anderson* (6th Dist. 2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed true no matter how improbable they may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (2d Dist. 1981) 123 Cal.App.3d 593, 604.) A review of the FAC reveals the fifth cause of action for fraudulent inducement-concealment and factual allegations in support thereof are adequately pleaded.

The demurrer is overruled. Defendant shall file its responsive pleading by May 12, 2023.

Motion to Strike Punitive Damages

The notice of motion included an incorrect address for the court. The parties are advised if oral argument is requested, it will be heard in Department 31, which is located at **10820** Justice Center Drive, Roseville, CA 95678.

Defendant moves to strike punitive damages in the first amended complaint ("FAC"). A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code Civ. Proc., § 436, subds. (a), (b).) A review of the allegations within the FAC, when read as a whole, show there are sufficient facts pleaded to support cause of action for fraudulent inducement-concealment. This is sufficient to support the claim for punitive damages.

The motion to strike is denied. Defendant shall file its responsive pleading by May 12, 2023.

9. S-CV-0049333 Twin Rocks Estate Vineyards Inc. v. Robledo, Rey

The demurrer to complaint is dropped from calendar in light of the first amended complaint filed April 12, 2023.

10. S-CV-0049673 Rivera, Bernardo Jr. v. Schafer, Ann K

The motion to compel is dropped from calendar as no moving papers were filed with the court.

11. S-CV-0049799 Macpherson, Scott v. FCA US LLC

In light of the notice of removal of action to federal court filed April 18, 2023, the motion to compel arbitration is dropped from calendar.

The case management conference currently scheduled May 22, 2023 is hereby vacated.

12. S-PR-0010949 In Re the Estate of Kankaanpaa, Kari

Moving party is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Motion to Be Relieved as Counsel

Counsel Kelley R. Carroll's motion to be relieved as counsel for the personal representative Diane Eberhard is granted, effective upon the filing of proof of service of the signed order on the personal representative.
